

October 31, 2013

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Misuse of Internet Protocol (IP) Captioned Telephone Service, CG Docket No. 13-24; *Telecommunications Relay Service and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123

Dear Ms. Dortch:

On October 29, 2013, on behalf of the CaptionCall, LLC subsidiary of Sorenson Communications, Inc., Walter Anderson and I met with Kris Monteith, Acting Chief of the Consumer and Governmental Affairs Bureau, Karen Peltz Strauss, Deputy Chief of the Consumer and Governmental Affairs Bureau, Eliot Greenwald, Attorney Advisor in the Disability Rights Office of the Consumer and Government Affairs Bureau, Robert Aldrich, Legal Advisor to the Bureau Chief, and Elaine Gardner from the Disability Rights Office of the Consumer and Government Affairs Bureau regarding the above-referenced proceedings. We discussed several aspects of the Commission's recent Internet Protocol Captioned Telephone Services ("IP CTS") order¹ upon which CaptionCall needs clarification to ensure it develops and implements effective compliance strategies.

Specifically, we addressed five topics: (1) registration; (2) public telephones; (3) third-party certification; (4) exceptions for government programs; and (5) equipment purchases by friends and family.

First, we identified what appears to be a conflict between the text of the *Final Order* and the codified rules. The *Final Order* requires providers to gather registration information from both "new users" and "existing IP CTS users."² The requirements for "new users" are relatively clear. For "existing users," however, the requirements announced in the text of the *Final Order* appear to conflict with the new codified rules, and the codified rules appear unintentionally

¹ *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-118, CG Docket Nos. 13-24; 03-123 (rel. Aug. 26, 2013) ("*Final Order*").

² *Id.* ¶ 69.

exclude the re-registration of certain users from the 180-day grace period. The text of the *Final Order* defines “existing IP CTS users” as “all users who are enrolled in a provider’s IP CTS as of the effective date of the amended registration and certification rule... and who have not previously undergone registration and certification by that provider in compliance with the interim registration and certification rule.”³ Thus, under this definition, providers need not re-register users who enrolled and began receiving service prior to the new rules’ effective date and registered in compliance with the *Interim Order*.⁴ In practical terms, for all “existing users,” so long as providers have collected name, address, and telephone number, providers do not need to collect date of birth or social-security data.⁵

The codified rules, however, require that providers “first obtain... registration information” as provided in the final rules “from *each consumer* prior to requesting compensation from the TRS Fund....”⁶ This language provides no exception for consumers who enrolled prior to the effective date of the new registration requirements and registered in compliance with the *Interim Order*. We do not believe this result was intentional, as it conflicts with the *Final Order*, and because it would require providers to obtain date of birth and social-security data in addition to the information providers have already collected.

Furthermore, if providers do have to collect date-of-birth and social-security data from customers who registered in compliance with the *Interim Order*, the codified rules do not apply a 180-day grace period for providers to collect the information from customers who enrolled and began receiving service after March 7, 2013. Instead, the codified rules provide the 180-day grace period only for “IP CTS users who began receiving service prior to March 7, 2013.”⁷ Thus, for consumers who registered after March 7, 2013, consumers, providers will have to collect new registration information prior to the effective date of the new rules. We do not believe this was intentional, as we believe that the Commission did not intend for providers to collect this information in the first place, and even if it did, there is no reason to allow a 180-day grace period for providers to re-register pre-March 7, 2013 customers but not post-March 7, 2013 customers.

We requested that the Commission clarify that either (1) providers do not have to collect date-of-birth or social-security data from users who registered in compliance with the *Interim*

³ *Id.* n.216.

⁴ *See Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-Speech Services for Individuals with Hearing and Speech Disabilities*, Order and Notice of Proposed Rulemaking, FCC 13-13, 28 FCC Rcd. 703 (2013) (“*Interim Order*”).

⁵ In addition to the data-collection issue, we also discussed IP CTS users who do not have a social security number. Staff indicated they were researching this problem, and at a later date we will provide examples of how other government programs address this issue, to the extent we can locate such information.

⁶ *Final Order*, App. B, 47 C.F.R. § 64.604(c)(9)(i) (emphasis added).

⁷ *Id.* § 64.604(c)(9)(xi).

Order, or (2) if such data collection is required, providers have 180 days to collect the data from all existing customers, regardless of when they began receiving service.

Second, in some locations, such as state and locally funded centers that assist Deaf and hard-of-hearing individuals, CaptionCall has provided IP CTS equipment that registered and certified hard-of-hearing consumers can use when they visit. We sought clarification regarding the registration information CaptionCall should collect for such phones, as well as whether CaptionCall needs to charge \$75 for them. At staff's request, we will provide additional information regarding this equipment at a later date.

Third, we sought clarification regarding the exclusions applicable to third-party certifications for existing IP CTS customer eligibility⁸ and the hardship exemption.⁹ We indicated that it is unclear precisely which kinds of professionals are able to provide certifications. In addition, we identified ambiguity in the disqualifying relationships between a hearing-health professional and an IP CTS provider's officer, director, employee, contractor, or agent. Though a "business relationship" could be found whenever a provider has an expressed or implied contract with a hearing-health provider, and a "family relationship" could reasonably extend to current spouses, current legally-recognized domestic partners, children, current siblings or parents, it is difficult to articulate an administrable definition of "social relationship." Without further guidance, CaptionCall does not believe it has adequate notice of the types of third-party certifications that the Commission intends to exclude.

Fourth, we sought clarification regarding whether the incentives ban applies to government programs. Some state distribution programs are structured in a way that allows hearing-health professionals both to sell an IP CTS telephone and to make a profit. For example, in some states, the distribution program gives qualified consumers a voucher for IP CTS equipment. In turn, the consumer can take the voucher to a hearing-health professional and exchange it for IP CTS equipment. The professional then turns the voucher into the state for payment. The voucher amount can exceed the price the hearing-health professional paid to acquire equipment from the IP CTS provider, which results in a profit to the hearing-health professional.

Finally, we sought clarification regarding the ability of individuals to buy IP CTS equipment as a gift for an eligible hard-of-hearing person. As we read the Commission's rules, the rule that makes an IP CTS provider "ineligible to receive compensation for minutes of IP CTS use generated by consumers using" equipment that the provider sells "at no charge or for less than \$75..."¹⁰ does not preclude an IP CTS user from having obtained that equipment through a gift from a third party unaffiliated with Sorenson—such as from a friend or family member. Accordingly, under the new rules, so long as CaptionCall has received \$75 from a source other than Sorenson, the \$75 payment requirement is satisfied and would not be a basis for denying compensation simply because the \$75 was paid by a party other than the user.

⁸ See *id.* §§ 64.604(c)(9)(v)-(viii).

⁹ See *id.* § 64.604(c)(10)(iv).

¹⁰ *Id.* § 64.604(c)(11)(i).

Sincerely,

A handwritten signature in black ink, appearing to read "John T. Nakahata", with a stylized, flowing script.

John T. Nakahata
Counsel to CaptionCall, LLC

cc: Kris Monteith
Karen Peltz Strauss
Gregory Hlibok
Eliot Greenwald
Robert Aldrich
Elaine Gardner